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X01748/301743

5 Attorneys for Defendant  
6 CITY OF OAKLAND  
7  
8

**ENDORSED  
FILED  
ALAMEDA COUNTY  
FEB 06 2003  
CLERK OF THE SUPERIOR COURT  
By Dorothy Duckett, Deputy**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11 **UNLIMITED JURISDICTION**

12 JAMALIA BROWN,

13 Plaintiff,

14 v.

15 CITY OF OAKLAND, JOHN GUTIERREZ,  
16 DEVIN UNDERWOOD, H. KIDD, B.  
BROCK, E. RICHOLT and DOES 1  
through 20, inclusive

17 Defendants.  
18

Case No. 2002-070113

NOTICE OF REMOVAL OF ACTION  
(28 U.S.C. Section 1446)

19 Attached hereto is a complete and a filed-endorsed copy of this document filed with  
20 United States District Court.

21 Dated: February 6, 2003

22 JOHN A. RUSSO, City Attorney  
23 RANDOLPH W. HALL, Assistant City Attorney  
24 STEPHEN Q. ROWELL, Deputy City Attorney

25 By: 

26 Attorneys for Defendant  
CITY OF OAKLAND

E-filing

1 JOHN A. RUSSO, City Attorney - State Bar #129729  
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Telephone: (510) 238-3865 Fax: (510) 238-6500  
X01748/301696

ORIGINAL  
FILED

FEB - 6 2003

RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

5 Attorneys for Defendants

6 CITY OF OAKLAND, D. UNDERWOOD,  
H. KIDD, B. BROCK, and E. RICHOLT

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 JAMILIA BROWN,

13 Plaintiff,

14 v.

15 CITY OF OAKLAND, JOHN GUTIERREZ,  
16 DEVIN UNDERWOOD, H. KIDD, B. BROCK,  
E. RICHOLT; AND DOES 1 TO 20,

17 Defendants.  
18

C-03 Case No. 0526 JL

NOTICE OF REMOVAL OF ACTION  
(28 U.S.C. Section 1446)

19 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
20 NORTHERN DISTRICT OF CALIFORNIA:  
21

22 PLEASE TAKE NOTICE that defendant, CITY OF OAKLAND, DEVON  
23 UNDERWOOD, H. KIDD, B. BROCK and E. RICHOLT hereby request that the state court  
24 action described below be removed to this Court pursuant to 28 U.S.C. section 1446.  
25

26 ///

I.

On or about December 18, 2002 the First Amended Complaint in the above-entitled action Civil Case No. 2002-070113 was filed in the Superior Court of the State of California, County of Alameda and is now pending in that court.

II.

On or about January 10, 2003 defendants CITY OF OAKLAND, DEVON UNDERWOOD, H. KIDD, B. BROCK and E. RICHOLT were served with a copy of the First Amended Complaint. The remaining defendant, JOHN GUTIERREZ has not been served. A copy of the Summons and Complaint in the above-entitled action is attached hereto as Exhibit "A."

III.

Defendants CITY OF OAKLAND, DEVON UNDERWOOD, H. KIDD, B. BROCK and E. RICHOLT filed Answers to the first amended complaint in Alameda County Superior Court. Copies of said Answers are attached hereto and incorporated herein as Exhibit "B". No other filings have been made in Superior Court.

IV.

The above-entitled case is a civil action under 42 U.S.C. section 1983 which alleges that plaintiff was arrested without probable cause, that she was falsely imprisoned in violation of her Fourth Amendment rights and that the CITY OF OAKLAND was deliberately indifferent to her constitutional rights.

V.

The Court has original jurisdiction of the above-entitled action pursuant to 28

1 U.S.C. section 1331, and the action may therefore be removed to this Court pursuant to  
2 28 U.S.C. section 1441(b).

3  
4  
5 **VI.**

6 Written notice of the filing of this Notice of Removal is being served on plaintiff's  
7 counsel on this date.

8 **VII**

9  
10 A true and correct copy of this Notice of Removal is being filed this date with the  
11 clerk of the Superior Court for the State of California, County of Alameda.

12  
13 Dated: February 6, 2003

14 JOHN A. RUSSO, City Attorney  
15 RANDOLPH W. HALL, Assistant City Attorney  
16 STEPHEN Q. ROWELL, Deputy City Attorney

17 By:   
18 Attorneys for Defendants CITY OAKLAND  
19  
20  
21  
22  
23  
24  
25  
26

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On date shown below, I served the within document(s):

NOTICE OF REMOVAL OF ACTION (28 U.S.C. Section 1445)

DECLARATION OF FILING NOTICE OF REMOVAL OF ACTION IN STATE COURT

NOTICE TO ADVERSE PARTIES OF REMOVAL OF ACTION (28 U.S.C. Section 1446)

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/ Express Mail.

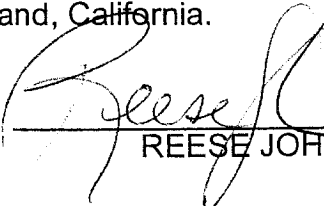
Martin Glickfeld, Esq.  
LAW OFFICES OF MARTIN GLICKFELD  
2133 Lombard Street  
San Francisco, CA 94123

Fax:  
Tel: (510) 528-2182  
**Attorney for Plaintiff**

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **February 6, 2003**, at Oakland, California.

  
\_\_\_\_\_  
REESE JOHNSON

**EXHIBIT** A

# SUMMONS

(CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (Aviso a Acusado)

CITY OF OAKLAND, JOHN GUTIERREZ,  
DEVIN UNDERWOOD, H. KIDD, B. BROCK,  
E. RICHOLT and DOES 1 through 20, inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF: JAMALIA BROWN  
(A Ud. le está demandando)

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER: (Número del Caso)

2002-070113

The name and address of the court is: (El nombre y dirección de la corte es)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA - NORTHERN DIVISION - UNLIMITED JURISDICTION

Courthouse, 1225 Fallon Street

Oakland, California 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

MARTIN GLICKFELD

95346

415-441-7491

Law Offices of Martin Glickfeld

2133 Lombard Street

San Francisco

CA

94123

DATE

(Fecha) DEC 18 2002

ARTHUR SIMS  
EXECUTIVE OFFICER/CLERK

Clerk, by  
(Actuario)

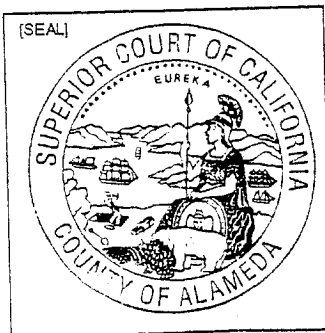
Dupe Bracford

Deputy  
(Delegado)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): CITY OF OAKLAND

- under:
- |   |   |
|---|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                     | <input type="checkbox"/> CCP 416.60 (minor)       |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)             | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership)      | <input type="checkbox"/> CCP 416.90 (individual)  |
| <input checked="" type="checkbox"/> other: CCP 416.50 (PUBLIC ENTITY) |   |
4. ☐ by personal delivery on (date):



**PROOF OF SERVICE — SUMMONS**  
*(Use separate proof of service for each person served)*

1. I served the
- a. ☐ summons ☐ complaint ☐ amended summons ☐ amended complaint  
☐ completed and blank Case Questionnaires ☐ Other (specify):
- b. on defendant (name):
- c. by serving ☐ defendant ☐ other (name and title or relationship to person served):
- d. ☐ by delivery ☐ at home ☐ at business  
 (1) date:  
 (2) time:  
 (3) address:
- e. ☐ by mailing  
 (1) date:  
 (2) place:
2. Manner of service (check proper box):
- a. ☐ **Personal service.** By personally delivering copies. (CCP 415.10)
- b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
- c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**
- d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) **(Attach completed acknowledgment of receipt.)**
- e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) **(Attach signed return receipt or other evidence of actual delivery to the person served.)**
- f. ☐ Other (specify code section):  
☐ additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
- a. ☐ as an individual defendant as the person sued under the
- b. ☐ fictitious name of (specify):
- c. ☐ on behalf of (specify):  
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor) ☐ other:  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
- d. ☐ by personal delivery on (date):
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: \$
6. Person serving:
- a. ☐ California sheriff, marshal, or constable.
- b. ☐ Registered California process server.
- c. ☐ Employee or independent contractor of a registered California process server.
- d. ☐ Not a registered California process server.
- e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).
- f. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

*(For California sheriff, marshal, or constable use only)*  
 I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)



**COF Y**

MARTIN GLICKFELD, ESQUIRE  
 State Bar No. 95346  
 LAW OFFICES OF MARTIN GLICKFELD  
 2133 Lombard Street at Fillmore  
 San Francisco, CA 94123  
 Telephone: (415) 441-7491

**ENDORSED  
 FILED  
 ALAMEDA COUNTY**

**DEC 18 2002**

CLERK OF THE SUPERIOR COURT  
 By Dupé Bradford, Deputy

Attorney for Plaintiff JAMALIA BROWN

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF ALAMEDA – NORTHERN DIVISION  
 UNLIMITED JURISDICTION

JAMALIA BROWN,

Plaintiff,

vs.

CITY OF OAKLAND, JOHN GUTIERREZ,  
 DEVIN UNDERWOOD, H. KIDD, B. BROCK,  
 E. RICHOLT and DOES 1 through 20, inclusive

Defendants.

CASE NO. 2002-070113

**PLAINTIFF'S FIRST AMENDED  
 COMPLAINT – CIVIL RIGHTS  
 VIOLATION (42 U.S.C.A. § 1983)**

**FIRST CAUSE OF ACTION –  
CIVIL RIGHTS VIOLATION (42 U.S.C.A. § 1983)**

1. Plaintiff herein, JAMALIA BROWN, is uncertain as to the true identities and capacities of defendants sued fictitiously herein as DOES 1 through 20; however, plaintiff is informed and believes and thereon alleges that said defendants are in some way responsible for the acts and/or omissions alleged hereinafter, proximately resulting in injuries and damages to plaintiff as herein alleged. At such time as plaintiff becomes aware of the true identities of said fictitiously named defendants, plaintiff will amend this Complaint accordingly.

2. Defendant City of Oakland, California, is a municipality which operates, manages, directs and/or controls the City of Oakland Police Department.

PLAINTIFF'S FIRST AMENDED COMPLAINT –  
 CIVIL RIGHTS VIOLATION (42 U.S.C.A. § 1983)

1           3. Defendants Gutierrez, Underwood, Kidd, Brock and/or Richolt, and each of them,  
2 at all relevant times were agents and/or employees of the City of Oakland and/or the City of  
3 Oakland Police Department. Plaintiff does not presently know the first names of Officers Kidd,  
4 Brock or Richolt, but will amend this Complaint accordingly when the same has been ascertained.

5           4. On or about March 16, 2001, plaintiff was lawfully present in a public area near  
6 premises located at 1620 Chestnut Street, Oakland, California. At said time and place, the  
7 Oakland Police Department, led by Officer Gutierrez, was in the vicinity as part of an effort to  
8 execute a premises search warrant to search the premises at 1620 Chestnut Street. At said time and  
9 place, defendants Gutierrez, Underwood, Kidd, Brock and/or Richolt, and each of them, were in  
10 involved in the "planting" of cocaine in a bush near to where the plaintiff was standing, and in  
11 causing the plaintiff to be detained and arrested by falsely reporting that the plaintiff had been seen  
12 throwing the cocaine into the bush. Plaintiff is informed and believes that this manipulating of  
13 evidence was part of a plan participated in and/or conceived by defendants Gutierrez, Underwood,  
14 Kidd, Brock and/or Richolt, and each of them. Specifically, plaintiff is informed and believes, and  
15 thereon alleges that defendants Underwood and/or Kidd falsely reported seeing plaintiff throw the  
16 cocaine into the bushes and that the remaining defendants participated in the act of falsely  
17 "discovering" the said cocaine. As a result of this false "planting" of evidence, plaintiff was not  
18 only arrested, but criminal charges were brought against him. He was in prison for approximately  
19 three (3) months, after which time he was able to make bail and was released from prison;  
20 however, the false charges brought against him as a result of the above-alleged police misconduct  
21 remained pending until they were dismissed on or about March 23, 2002. Accordingly, under  
22 Government Code Section 945.3, the time period in which it was necessary to bring this action  
23 under 42 U.S.C.A. Section 1983 is tolled until any such charges were dismissed.

24           5. Officer Underwood, in connection with the criminal proceedings, gave testimony  
25 under oath in which he falsely stated that he had observed plaintiff attempting to discard the  
26 cocaine evidence when, in fact, he knew this was not true. Plaintiff is informed and believes, and  
27 thereon alleges, that Officer Gutierrez, has been the subject of an Internal Affairs probe (the

1 specific details of which are not completely presently known to the plaintiff); however, plaintiff  
2 is informed and believes, and thereon alleges, that Officer Gutierrez falsified reports in connection  
3 with this matter and gave testimony in Court which was false; and that Officer Gutierrez knew that  
4 the cocaine "evidence" obtained had been "planted", but nonetheless caused plaintiff to be arrested  
5 and ultimately criminally charged. Plaintiff is informed and believes that said officer has only now  
6 finally been terminated as a result of the very conduct which provides the basis for this claim.

7         6.       The City of Oakland Police officers involved in this incident acted under color of  
8 State law and without any cause or justification and with deliberate indifference to the rights of the  
9 plaintiff. Said conduct was designed to, and did, in fact, deprive plaintiff of his rights, privileges  
10 and immunities under 42 U.S.C.A. Section 1983, the Fourth and Fourteenth Amendments of the  
11 United States Constitution and the laws of the State of California.

12         7.       Furthermore, the City of Oakland, as a matter of policy and practice has, with  
13 deliberate indifference, failed to adequately discipline, train or otherwise direct its Police officers  
14 concerning the rights of citizens and has and does fail to properly investigate complaints of  
15 misconduct, thereby causing and encouraging Police, and specifically, the Police officers in this  
16 case, to engage in the unlawful conduct described above.

17         8.       The City of Oakland, as a matter of policy and practice has, with deliberate  
18 indifference, failed to properly sanction, discipline, in-service or re-train Police officers, including  
19 the Police officers involved in this case, for violations of the Constitutional rights of citizens,  
20 thereby causing Police, including the officers in this case, to engage in unlawful conduct.

21         9.       The City of Oakland, as a matter of policy and practice has, and continues to, with  
22 deliberate indifference, failed to sanction, discipline or terminate Police officers, including  
23 specifically Officer Underwood, who participate in and/or are aware of and subsequently conceal  
24 violations of the Constitutional rights of citizens by other Police officers, thereby causing and  
25 encouraging Police, including the officers in this case, to engage in unlawful conduct.

26         10.       Plaintiff is informed and believes, and thereon alleges, that there was, prior to and  
27 at the time of the incident, a well-known and widespread practice in the Oakland Police

1 Department to disregard individual fundamental civil rights guaranteed under the Constitution  
 2 during the investigation of criminal activities and the apprehension of criminals, as said rights were  
 3 deemed to be less important than the officers' ability to conduct said policies activities  
 4 "unfettered". As a proximate result of this very practice within the Oakland Police Department,  
 5 numerous individuals, including the plaintiff herein, have been falsely and improperly searched,  
 6 accused, detained, arrested and/or charged with criminal activity, with a conscious and deliberate  
 7 disregard and indifference to those individuals and their rights.

8 11. The actions of the defendants herein, and each of them, acting under color of State  
 9 law, discriminated against and deprived the plaintiff of his rights, privileges and immunities under  
 10 the law and under the Constitution of the United States; in particular, the right to be secure in  
 11 person and property, to be free from false imprisonment, and to due process.

12 12. By these actions, defendants, and each of them, have deprived plaintiff of his rights  
 13 secured by the Fourth and Fourteenth Amendments to the United States Constitution, in violation  
 14 of 42 U.S.C.A. Section 1983.

15 WHEREFORE, plaintiff prays for relief as hereinafter set forth:

- 16 1. For general and special damages for violation of 42 U.S.C.A. Section 1983;
- 17 2. For attorneys' fees;
- 18 3. For costs of suit; and
- 19 4. For such other and further relief as the Court may deem just and proper in the  
 20 premises.

21  
 22 Dated: Dec. 9, 2002

Respectfully submitted,

23  
 24   
 25 MARTIN GLICKFELD  
 Attorney for Plaintiff JAMALLA BROWN

26 C:\CLIENTS\BROWN, J\Pleadings\FIRST AMENDED COMPLAINT.wpd

27  
 28 PLAINTIFF'S FIRST AMENDED COMPLAINT -  
 CIVIL RIGHTS VIOLATION (42 U.S.C.A. §1983)

**EXHIBIT** B

1 JOHN A. RUSSO, City Attorney - State Bar No. 129729  
2 RANDOLPH W. HALL, Assistant City Attorney - State Bar No. 080142  
3 STEPHEN Q. ROWELL, Deputy City Attorney - State Bar No. 098281  
4 One Frank Ogawa Plaza, 6th Floor  
Oakland, California 94612  
Telephone: (510) 238-3865 Fax: (510) 238-6500  
X01748/301642

5 Attorneys for Defendant  
6 CITY OF OAKLAND  
7

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JAN 29 2003**

**CLERK OF THE SUPERIOR COURT  
By Dorothy Duckett, Deputy**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10 **UNLIMITED JURISDICTION**  
11

12 JAMALIA BROWN,

13 Plaintiff,

14 v.

15 CITY OF OAKLAND, JOHN GUTIERREZ,  
16 DEVIN UNDERWOOD, H. KIDD, B.  
17 BROCK, E. RICHOLT and DOES 1  
through 20, inclusive

18 Defendants.  
19

Case No. 2002-070113

**ANSWER OF DEFENDANT CITY OF  
OAKLAND TO FIRST AMENDED  
COMPLAINT**

20 Defendant CITY OF OAKLAND answers the unverified First Amended  
21 Complaint herein as follows:

22 I.

23 Under the provisions of Section 431.30(d) of the California Code of Civil  
24 Procedure, defendant generally denies each and every allegation contained in said First  
25 Amended Complaint.  
26

## 1 II.

2 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 defendant alleges that the First Amended Complaint fails to state a cause of action  
4 against this defendant.

## 5 III.

6 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
7 defendant, on information and belief, alleges that plaintiff was careless and/or negligent in  
8 or about the events alleged in the First Amended Complaint, and assumed the risks of the  
9 events or accident, and said conduct was the proximate cause of the injuries and  
10 damages alleged.

## 11 IV.

12 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
13 defendant alleges, on information and belief, that plaintiff not exercise ordinary care,  
14 caution, or prudence to avoid the alleged event and/or accident; consequently, the  
15 subsequent injuries or damages, if any, sustained by plaintiff were proximately caused by  
16 and contributed to by plaintiff's comparative negligence, and any damages they might  
17 otherwise be entitled to should be proportionately reduced by the degree of plaintiff's  
18 negligence.

## 19 V.

20 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 defendant alleges that the injuries and damages plaintiff complains of resulted from the  
22 acts and/or omissions of others, or acts of God, and without any fault on the part of  
23 defendant.

## 24 VI.

25 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 defendant alleges that any party or individual who was negligent and/or contributed to the



1 alleged injuries and damages was not acting as its agent or with its knowledge or within  
2 the course and/or scope of employment with defendant CITY OF OAKLAND.

3 VII.

4 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 defendant alleges that this action is barred by all applicable Government Code  
6 immunities, including, but not limited to, sections 815 through 900. Said sections are  
7 pleaded as though fully set forth herein.

8 VIII.

9 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
10 defendant alleges that it are not liable for punitive damages pursuant to Government  
11 Code section 818.

12 IX.

13 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 defendant alleges that all of the actions of defendant was undertaken in good faith and  
15 with the reasonable belief that such actions were valid, necessary, reasonable, lawful and  
16 constitutionally proper, entitling defendant to the qualified immunity of good faith.

17 X.

18 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
19 defendant alleges that, if it in any fashion caused the injuries or damages alleged,  
20 although such liability is expressly denied herein, it's acts and/or omissions were  
21 reasonable and privileged.

22 XI.

23 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
24 defendant alleges, on information and belief, that plaintiff failed to mitigate damages.

25 XII.

26 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,



1 defendant alleges that, to the extent that plaintiff alleges or asserts matters not contained  
2 in a legally sufficient claim filed by him, this action is barred by the claims requirements  
3 set forth in Government Code Section 905 et seq.

4 **XIII.**

5 AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
6 defendant alleges that this action is barred, under Government Code § 945.6, by  
7 plaintiffs' failure to file his action within six months after denial of his claim by defendant.

8 **XIV.**

9 AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE  
10 DEFENSE, defendant alleges that this action is barred by all applicable statutes of  
11 limitations.

12 **WHEREFORE**, defendant prays that:

- 13 1. Plaintiff take nothing by reason of her First Amended
- 14 Complaint;
- 15 2. Defendant have judgment against plaintiff;
- 16 3. Defendant be awarded their costs of suit incurred herein,
- 17 including costs specified in Code of Civil Procedure § 1038; and/
- 18 4. The Court award such other relief as it may deem proper.

19  
20 Dated: January 28, 2003

21 JOHN A. RUSSO, City Attorney  
22 RANDOLPH W. HALL, Assistant City Attorney  
23 STEPHEN Q. ROWELL, Deputy City Attorney

24 By: 

25 Attorneys for Defendant  
26 CITY OF OAKLAND

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On date shown below, I served the within document(s):

**ANSWER OF DEFENDANT CITY OF OAKLAND TO FIRST AMENDED COMPLAINT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/ Express Mail.

Marin Glickfeld, Esq.  
LAW OFFICES OF MARTIN GLICKFELD  
2133 Lombard Stret at Fillmore  
San Francicso, CA 94123  
Fax:  
Tel: (510) 528-2182  
***Attorney for Plaintiff***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May, 23, 2002**, at Oakland, California.

\_\_\_\_\_  
PATRICIA WHITE

PROOF OF SERVICE

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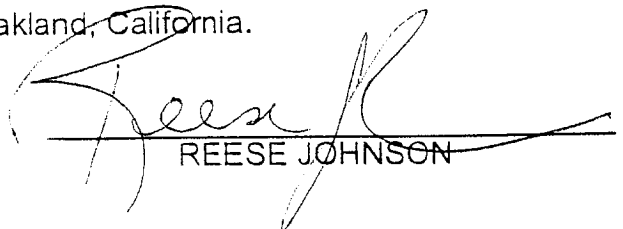
Martin Glickfeld, Esq.  
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2133 Lombard Street  
San Francisco, CA 94123

Fax:  
Tel: (510) 528-2182  
**Attorney for Plaintiff**

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **January 29, 2003**, at Oakland, California.

  
REESE JOHNSON

ENDORSED  
FILED  
ALAMEDA COUNTY

1 JOHN A. RUSSO, City Attorney - State Bar No. 129729  
2 RANDOLPH W. HALL, Assistant City Attorney - State Bar No. 080142  
3 STEPHEN Q. ROWELL, Deputy City Attorney - State Bar No. 098228  
4 One Frank Ogawa Plaza, 6th Floor  
Oakland, California 94612  
Telephone: (510) 238-3865 Fax: (510) 238-6500  
X01748/301899

FEB 03 2003  
CLERK OF THE SUPERIOR COURT  
By R.C. Hughes,

5 Attorneys for Defendants  
6 D. UNDERWOOD, H. KIDD, B.  
BROCK and E. RICHOLT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11  
12 JAMALIA BROWN,

13 Plaintiff,

14 v.

15  
16 CITY OF OAKLAND, JOHN GUTIERREZ,  
DEVIN UNDERWOOD, H. KIDD, B.  
17 BROCK, E. RICHOLT and DOES 1  
through 20, inclusive

18 Defendants.

Case No. 2002-070113

ANSWER OF DEFENDANTS DEVIN  
UNDERWOOD, H. KIDD, B. BROCK  
AND E. RICHOLT TO FIRST AMENDED  
COMPLAINT

19  
20 Defendants DEVIN UNDERWOOD, H. KIDD, B. BROCK and E. RICHOLT

21 ("Defendants") answer the unverified First Amended Complaint herein as follows:

22 I.

23 Under the provisions of Section 431.30(d) of the California Code of Civil  
24 Procedure, Defendants generally denies each and every allegation contained in said First  
25 Amended Complaint.

1 II.

2 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants allege that the First Amended Complaint fails to state a cause of action  
4 against these defendants.

5 III.

6 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
7 defendants, on information and belief, alleges that plaintiff was careless and/or negligent  
8 in or about the events alleged in the First Amended Complaint, and assumed the risks of  
9 the events or accident, and said conduct was the proximate cause of the injuries and  
10 damages alleged.

11 IV.

12 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
13 defendants allege, on information and belief, that plaintiff not exercise ordinary care,  
14 caution, or prudence to avoid the alleged event and/or accident; consequently, the  
15 subsequent injuries or damages, if any, sustained by plaintiff were proximately caused by  
16 and contributed to by plaintiff's comparative negligence, and any damages they might  
17 otherwise be entitled to should be proportionately reduced by the degree of plaintiff's  
18 negligence.

19 V.

20 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 defendants allege that the injuries and damages plaintiff complains of resulted from the  
22 acts and/or omissions of others, or acts of God, and without any fault on the part of  
23 defendants.

24 VI.

25 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 defendants allege that this action is barred by all applicable Government Code

1 immunities, including, but not limited to, sections 815 through 900. Said sections are  
2 pleaded as though fully set forth herein.

3 **VII.**

4 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 defendants alleges that all of the actions of defendants were undertaken in good faith and  
6 with the reasonable belief that such actions were valid, necessary, reasonable, lawful and  
7 constitutionally proper, entitling defendants to the qualified immunity of good faith.

8 **VIII.**

9 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
10 defendants allege that, if it in any fashion caused the injuries or damages alleged,  
11 although such liability is expressly denied herein, it's acts and/or omissions were  
12 reasonable and privileged.

13 **IX.**

14 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
15 defendants allege, on information and belief, that plaintiff failed to mitigate damages.

16 **X.**

17 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
18 defendants allege that, to the extent that plaintiff alleges or asserts matters not contained  
19 in a legally sufficient claim filed by him, this action is barred by the claims requirements  
20 set forth in Government Code Section 905 et seq.

21 **XI.**

22 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
23 defendants allege that this action is barred, under Government Code § 945.6, by  
24 plaintiffs' failure to file his action within six months after denial of his claim by defendants.

25 **XIV.**

26 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

1 defendants allege that this action is barred by all applicable statutes of limitations.

2 **WHEREFORE**, defendants pray that:

- 3 1. Plaintiff take nothing by reason of her First Amended  
4 Complaint;  
5 2. Defendants have judgment against plaintiff;  
6 3. Defendants be awarded their costs of suit incurred herein,  
7 including costs specified in Code of Civil Procedure § 1038; and/  
8 4. The Court award such other relief as it may deem proper.  
9

10 Dated: February 3, 2003

11 JOHN A. RUSSO, City Attorney  
12 RANDOLPH W. HALL, Assistant City Attorney  
13 STEPHEN Q. ROWELL, Deputy City Attorney

14 By:   
15 Attorneys for Defendant  
16 CITY OF OAKLAND  
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26

PROOF OF SERVICE

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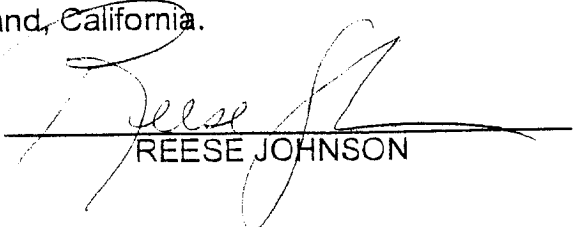
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Executed on **February 3, 2003**, at Oakland, California.

  
REESE JOHNSON